

**REMARKS**

Claims 1-6 are pending in this application. Applicants respectfully submit that claims 1-6 are allowable for at least all the reasons discussed in the June 23, 2009 Amendment and, further, for the additional reasons discussed below. Accordingly, reconsideration and allowance are respectfully requested.

**I. Rejection Under 35 U.S.C. §103**

The Office Action rejects claims 1-6 under 35 U.S.C. §103(a) as having been obvious over the combination of Shunsuke, Yamauchi, Toru, Rooney, and the allegedly admitted state of the art. In addition to the reasons discussed in the June 23, 2009 Amendment, Applicants respectfully traverse the rejection for the additional reasons discussed below.

Claims 1 and 5 require that the oil-in-water emulsified food "has a dissolved oxygen concentration of 0.8 to 8.1 %O<sub>2</sub> immediately after manufacturing" and "adjusting a dissolved oxygen concentration in the oil-in-water emulsified food to 0.8 to 8.1 %O<sub>2</sub>," respectively.

As discussed in the June 23, 2009 Amendment, the Examiner pointed out, during the June 11, 2009 interview, that the specification describes "immediately after manufacturing" to mean "the manufacturing day or the next day" (see specification at page 6, lines 3-5) and asserted that the whipped, oil-in-water emulsified foods disclosed by Toru would have the recited dissolved oxygen concentration of 0.8% to 8.1% by the next day after manufacturing, even if not initially within the recited range. Herewith, Applicants respectfully submit conclusive evidence establishing that the whipped, oil-in-water emulsified foods disclosed by Toru have a dissolved oxygen concentration that is much greater than 8.1% immediately after manufacturing (including one day after manufacturing). See Mr. Aliizumi and Mr. Matsuda's Rule 132 Declaration (attached). Specifically, the oil-in-water emulsified foods prepared according to Example 1 of Toru were measured to have average dissolved oxygen concentrations of 17.3 %O<sub>2</sub> immediately after manufacturing, 16.5 %O<sub>2</sub> one day after

manufacturing, 15.0 %O<sub>2</sub> four days after manufacturing, and 9.5 %O<sub>2</sub> ten days after manufacturing. Id. at Table 2.

Additionally, the average dissolved oxygen concentrations set forth in the Declaration were obtained using a fluorescent oxygen concentration meter (described as Measurement Method 2 in the specification, beginning at page 15, line 3). See Declaration at page 3. As compared to using a polarograph-type oxygen concentration meter (described as Measurement Method 1 in the specification, beginning at page 13, line 14), a fluorescent oxygen concentration meter tends to report lower dissolved oxygen concentration readings. Id.; compare specification at Tables 3 and 4 (pages 30 and 32, respectively). Thus, the average dissolved oxygen concentrations set forth in Table 2 of the Declaration would be expected to be even higher if measured using a polarograph-type oxygen concentration meter.

Claims 2 and 6, which depend from claims 1 and 5, respectively, require a dissolved oxygen concentration of "1.0 to 7.1% O<sub>2</sub> immediately after manufacturing as a value obtained by measuring with a fluorescent oxygen meter" (emphasis added). Applicants also respectfully submit that the Declaration is conclusive evidence that the whipped, oil-in-water emulsified foods disclosed by Toru have a dissolved oxygen concentration that is much greater than 7.1% immediately after manufacturing (including one day after manufacturing) as a value obtained by measuring with a fluorescent oxygen concentration meter.

Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

## II. Conclusion

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of this application are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



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JAO:MCB

Attachment:

Declaration Under 37 C.F.R. §1.132

Date: September 15, 2009

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